



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	State Water Control Board
VAC Chapter Number:	Primary Action: 9VAC 25-720 Secondary Action: 9 VAC 25-420, 430, 440, 450, 452, 460, 470, 480, 490, 500, 510, 520, 530, 540, 550, 560, 570 and 572
Regulation Title:	Primary Action: Water Quality Management Planning Regulation Secondary Action: Water Quality Management Plans (Watershed Plans)
Action Title:	Primary Action: Adoption of Water Quality Management Planning Regulation Secondary Action: Repeal 18 Water Quality Management Plans as state regulations
Date:	January 10, 2003

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The primary action is the adoption of a Water Quality Management Planning Regulation. The regulation will contain Total Maximum Daily Loads (TMDLs), stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

The secondary action is the repeal of the existing Water Quality Management Plans (WQMPs) as state regulations. These watershed plans are basinwide or areawide waste treatment or pollution control management plans developed in accordance with sections 208 and 303(e) of the Clean Water Act (CWA), as implemented by 40 CFR 130. These plans contain TMDLs, effluent limitations including water quality based effluent limits, waste load allocations, and the recommended pollution control measures needed to attain or maintain water quality standards.

During the 1970s and through the early 1990s, 18 WQMPs were adopted as regulations by the State Water Control Board (SWCB). These plans no longer reflect current conditions and need to be updated. There are no federal or state statutory or regulatory requirements for the plans to be regulations, but they continue to be carried on the books of the Virginia Register of Regulations. The repeal of these plans as regulations will allow for a more dynamic WQMP update process; reduce potential for conflicts between TMDLs, VPDES permits and the existing WQMPs; and eliminate unnecessary and outdated regulations.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On January 6, 2003, the State Water Control Board unanimously adopted the following staff recommendations:

- adopt the final revised Water Quality Management Planning regulation and
- repeal the existing Water Quality Management Plans as regulations, but retain them as the basin wide or area wide plans until they are updated.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The Clean Water Act, §303(d)(1)(c) and (2), as implemented by the Federal Water Quality Management Regulation, 40 CFR 130, authorize the states to develop Total Maximum Daily Loads (TMDLs). Sections 62.1-44.15 (10), 62.1-44.15(13), and 62.1-44.19:7 of the Code of Virginia give the State Water Control Board the duty and authority to develop and adopt TMDLs and establish programs for effective area-wide and basin-wide water quality control and management. The Code also authorizes the Board to develop pollution abatement and water quality control plans.

Water Quality Management Plans are required by Section 303(e) of the Clean Water Act [33 U.S.C. 1313(e)] as implemented by 40 CFR 130. Federal law does not require that water quality management plans be adopted as regulation.

The Office of the Attorney General has certified that the State Water Control Board has the authority to promulgate the proposed regulation and repeal the Water Quality Management Plans as state regulations under applicable law, including Chapter 3.1 of Title 62.1 of the Code of Virginia.

Note: The full texts of the legal authorities can be found at the following web site addresses:

<http://www.vipnet.org/vipnet/government/code-of-virginia.html>

<http://www4.law.cornell.edu/uscode/33/1251.html>

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The Water Quality Management Planning regulation is a single regulation that replaces 18 regulations. This single regulation will serve as a repository for the SWCB adopted TMDLs, stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

During the 1970s and through the early 1990s, 18 WQMPs were adopted in their entirety as regulations by the Board . These watershed plans (regulations) do not reflect current conditions and need to be updated. There are no federal or state statutory or regulatory requirements for entire watershed plans to be regulations, but they continued to be carried on the books of the Virginia Register of Regulations. The repeal of these plans as regulations allows for a more dynamic update process for these watershed plans and eliminates unnecessary and outdated regulations. The regulatory components of the watershed plans such as SWCB adopted TMDLs, stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations will be contained in the Water Quality Management Planning regulation.

The regulatory actions were necessary to protect the health, safety or welfare of the citizens of the Commonwealth because they will provide a more dynamic planning process thereby improving the process for water quality management planning.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The primary action was the adoption of the Water Quality Management Planning Regulation that will contain Total Maximum Daily Loads (TMDLs), stream segment classifications, effluent limitations including water quality based effluent limitations, and wasteload allocations. The secondary action was the repeals the existing WQMPs as state regulations.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The advantages of the primary proposal, the WQMP regulation, is that the TMDLs, stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations will be contained in one regulation. Virginia has over 600 TMDLs to adopt as regulations by the year 2010.

The advantages of the repeal of the 18 existing WQMPs as regulations are allowing for a more dynamic WQMP development/update process; reducing potential for conflicts between TMDLs, VPDES permits and the existing WQMPs; and eliminating unnecessary and outdated regulations.

There are no federal or state requirements that WQMPs be adopted as regulations.

There is no potential disadvantage to the public, agency, or the Commonwealth resulting from the adoption of the Water Quality Management Planning regulation or the repeal of the 18 WQMPs as state regulations.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

The concept of the secondary action, repeal of the existing 18 WQMPs as state regulations is unchanged. The concept of the primary action, a public participation regulation, was revised to provide that the public participation procedures water quality management planning be established by Board-approved guidance and a water quality management planning regulation be adopted that include the regulatory components of water quality management plans; i.e. TMDLs, stream classifications, effluent limitations including water quality based effluent limitations and waste load allocations. The substance of the new water quality management planning regulation moves the existing regulatory stream classifications, effluent limitations including water quality based effluent limitations and waste load allocations from the existing 18 WQMPs into a single regulation and establishes a repository for TMDLS. This was published as final in conjunction with a notice of suspension of the effective date in the Virginia Register of Regulations on September 9, 2002. The only changes to the regulation since the September 9, 2002 publication are the incorporation of additional text from the existing regulations a change in the information on the discharge for the Town of Keysville based on a previous Board action concerning a consent special order.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

A summary of the comments received follows.

The Board must be required to review and approve all TMDLs before they are submitted to the Environmental Protection Agency (“EPA”). Following such review and approval, affected members of the regulated community -- including dischargers regulated under Va. Code § 62.1-44.16 -- must be afforded an opportunity for a hearing under Va. Code § 62.1-44.25.

With the number of TMDLs required by the schedule contained in the Consent Decree, it is nearly impossible to complete all TMDLs in time for Board action prior to submittal to EPA. Those TMDLs submitted to EPA for approval prior to Board action will be presented to the Board for approval after EPA’s action.

State Water Control Law allows an owner to request a public hearing on a TMDL after the SWCB approval of a TMDL. Should a public hearing show the need to modify the allocations contained in a TMDL to be submitted to EPA or in an EPA approved TMDL, the TMDL would need to re-enter the TMDL process for revision and be submitted or re-submitted to EPA for approval.

If the courts rule that TMDLs are not exempt from Article 2 of the APA, then the General Assembly would have to be petitioned for a TMDL specific exemption from the APA? Due time constraints imposed by the schedule in the Consent Decree, Virginia cannot take TMDLs through the provisions of Article 2 of the APA and meet the schedule. Without an

exemption from Article 2, EPA would have to take over Virginia's TMDL program. This would allow EPA to make the decisions on VPDES permit effluent limitations in TMDL waters.

Will TMDL guidance and TMDL implementation plan guidance be developed as two separate documents?

Yes, they will be separate documents.

Will the TMDL implementation plan guidance contain language addressing permit reissuance and timing with respect to the TMDL.

When a TMDL WLA results in the need for effluent limitations in a VPDES permit, the reissuance and timing of compliance with the effluent limits will be handled in the permitting process. Once a TMDL is approved by EPA and adopted by the SWCB, DEQ will incorporate the effluent limitations and a schedule of compliance during the subsequent permit reissuance.

Will the TMDL implementation plan guidance address the use of UAAs?

EPA is currently evaluating the linkage between TMDLs and the UAA process. In June of 2002, EPA held a national UAA workshop in Washington, D.C. to review some of the problems and issues the states were encountering in use attainment through the TMDL programs, especially the swimming and aquatic life uses. At this time, EPA's guidance is not sufficient for DEQ to address the application of the UAA process in the TMDL guidance.

If a TMDL has not been developed for an impaired water, how will existing permits be affected.

If a TMDL has not been developed for an impaired water, a permit reissuance for this water could contain a re-opener clause based upon the completion of the TMDL.

The definition section of the regulation does not contain a definition of stream segment classification.

DEQ plans to address the stream segment classification issue in the first revision of the regulation.

The information in table B7 does not reflect current permit information.

Table B7 and other sections of the regulation will be updated in the first revision of the regulation.

Review of the Water Quality Management Planning public participation guidance document is requested before the Board is asked to take action.

Current TMDL guidance documents are being developed and they will include the TMDL public participation process the agency uses for TMDL development. Before final action is taken on these documents, DEQ will request public review and comments.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This

statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

The concept of the secondary action, repeal of the existing 18 WQMPs as state regulations is unchanged. However, the concept of the primary action, a public participation regulation, was changed to Board-approved guidance. Also, as part of this change a water quality management planning regulation would be adopted which would contain the regulatory components of water quality management plans; i.e. TMDLs, stream classifications, effluent limitations including water quality based effluent limitations and waste load allocations.

The substance of the Water Quality Management Planning regulation is the existing stream classifications, effluent limitations including water quality based effluent limitations and waste load allocations from the existing 18 WQMPs into a single regulation. Also, this regulation is a repository for EPA approved TMDLs adopted by the SWCB.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The development of Water Quality Management Planning programs is for the reduction of amount of pollutants entering the Commonwealth's waterways and the attainment and maintain the designated uses of Virginia's impaired waters and has no direct impact on family institution and stability.